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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/572,356

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EXAMINER

NIESZ, JASON KAROL

ART UNIT

PAPER NUMBER

3751

NOTIFICATION DATE

DELIVERY MODE

04/17/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/572,356	<b>Applicant(s)</b> STADLMAYR ET AL.	
	<b>Examiner</b> JASON K. NIESZ	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/31/2007</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 10/31/2007 was considered by the examiner.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 recites the limitation "before or after being flushed with nitrogen." There is insufficient antecedent basis for this limitation in the claim.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

((a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 16-18 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Bedin et al. (US Patent 5,720,148).

In Re claims 16 and 17 an Bedin discloses a method for the preparation and bottling of liquids comprising the steps of enriching a liquid with nitrogen and filling said liquid into a container (Column 5, lines 10-32) (Column 7, lines 25-45).

In Re claim 18 the Bedin method as disclosed above in Re claims 16 and 17 discloses enriching a liquid with nitrogen and then keeping it under nitrogen atmosphere for the remainder of the filling process (Column 5, lines 10-32) (Column 7, lines 25-45).

In Re claim 29 Bedin discloses a bottle (Column 7, line 32).

8. Claims 16, 17 and 29 are rejected under 35 U.S.C. 102(a) as being anticipated by Meheen (US Patent 6,457,495).

In Re claim 16 with reference to Figure 5B Meheen discloses a method for the preparation and bottling of liquids comprising filling a container with a gas enriched liquid (S60) (Column 14, lines 33-35), the examiner notes that soda is a gas enriched liquid. Meheen also discloses sealing the containers (Column 14, lines 58-60). Meheen also discloses pressurizing the liquid with a nitrogen atmosphere while filling (Column 13, lines 40-53).

In Re claim 17 Meheen discloses soda (Column 14, lines 33-35), which is a gas enriched liquid and has therefore inherently been enriched with a gas. Meheen further

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discloses pressurizing the liquid with nitrogen while filling, a step which takes place after the liquid is enriched.

In Re claim 29 Meheen with reference to Figure 5 Meheen discloses a bottle (GB).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Meheen.

In Re claim 19 Meheen discloses the claimed invention except for the pressure range of the nitrogen atmosphere used in the counter-pressure operation. It would have been obvious to one having ordinary skill in the art at the time the invention was made to pressurize the nitrogen atmosphere in the range of 1-10 bar, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

11. Claims 16, 17 and 20-24, 29-34 and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clusserath et al. (US Patent 6,474,368) in view of Tsukano et al. (US Patent 6,308,752).

In Re claims 16 and 17 Clusserath discloses a method for the preparation and bottling of liquids comprising the steps of filling a container with a gas enriched liquid

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(Figure 7, 207) (Column 10, line 15), The examiner notes that beer is a gas enriched liquid. Clusserath further discloses the steps of sealing the container (Figure 8, 223) and keeping the enriched liquid under an inert atmosphere during the bottling process (Column 5, lines 47-67 and Column 6, lines 1-28) (Column 3, lines 43-59).

Clusserath doesn't disclose the use of nitrogen.

Tsukano discloses a beverage filling machine similar to Clusserath which uses nitrogen as an inert pressurizing gas (Column 3, lines 56-58).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Clusserath method by using nitrogen as the inert gas, since the use of the nitrogen gas for the more general "inert" gas of the Clusserath method would require only routine skill in the art.

In Re claim 20 with reference to Figure 7 Clusserath discloses the steps of pre-pressurizing the container with the inert gas (206). As can be seen from Figure 4 the pre-pressurizing gas source (18) is the same as the liquid pressurizing gas (14). This indicates that the pre-pressurizing occurs at the same pressure as the container filling.

In Re claim 21 with reference to Figure 7 Clusserath discloses flushing the container with inert gas prior to filling (202, 204).

In Re claim 22 with reference to Figure 7 Clusserath discloses evacuating the container (205) prior to the pre-pressurization step.

In Re claim 23 with reference to Figure 7 Clusserath discloses pressurizing the container (206) after flushing the container (202, 204).

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In Re claim 24 Clusserath in view of Tsukano discloses all the limitations, but doesn't disclose reuse of the pressurizing gas. However, it was commonly known in the art at the time of the invention to reclaim gas used in pressurizing operations as a way to preserve potentially expensive pressurized gas. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Clusserath method by reclaiming the inert gas from the pre-pressurizing step and using it to flush subsequent containers, in order to prevent waste.

In Re claim 29 with reference to Figure 3, Clusserath discloses a bottle (2).

In Re claim 30 with reference to Figure 3 Clusserath discloses an apparatus for the preparation and bottling of liquids comprising: a filling element (22), having a liquid valve (11). Clusserath further discloses a gas valve (24) connected to a gas filled chamber (14) by way of a flow connection (18). Clusserath further discloses a vat (12) partially filled with a liquid and pressurized with an inert gas (14).

Clusserath doesn't disclose the use of nitrogen.

Tsukano discloses a beverage filling machine similar to Clusserath which uses nitrogen as an inert pressurizing gas (Column 3, lines 56-58).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Clusserath apparatus by using nitrogen as the inert gas, since the use of the nitrogen gas for the more general "inert" gas of the Clusserath apparatus would require only routine skill in the art.

In Re claim 31 with reference to Figure 4 Clusserath discloses a flush gas channel (18) and a pressurization valve (24).

In Re claim 32 with reference to Figure 4 Clusserath discloses a vacuum channel (21) and a relief valve (24).

In Re claim 33 with reference to Figure 4 Clusserath discloses a gas enriched liquid (15) entering partially filled tank (12) which can be pressurized with nitrogen.

In Re claim 34 Clusserath discloses the claimed invention except for the pressure range of the nitrogen atmosphere used to pressurize the vat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to pressurize the nitrogen atmosphere in the range of 1-10 bar, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

In Re claim 38 Clusserath discloses a liquid enriched with carbon dioxide (beer) (Column 10, line 15).

In Re claim 39 the examiner notes that gas enriched liquid inherently contains dissolved gas.

In Re claim 40 with reference to Figure 3 Clusserath discloses a bottle (2).

12. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meheen in view of Quinn (US Patent 5,131,440).

In Re claim 25 Meheen as applied to claim 16 above discloses all the limitations, but doesn't disclose the step of introducing a liquid gas into the container prior to filling the container.



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Quinn discloses a dispensing system which can be used to apply a liquid gas dose to a container prior to filling in order to help exclude oxygen (Column 7, lines 55-62).

Therefore, it would have been obvious to one of ordinary skill in the art to modify the method of Meheen by including the Quinn step of introducing a liquid gas, prior to placing the bottle on the Meheen filling apparatus, in order to help exclude oxygen from the filling process.

In Re claim 26 Quinn discloses nitrogen (abstract).

In Re claim 27 the combined Meheen in view of Quinn method applied to claim 25 above introduces the liquid gas prior to the Meheen filling method which contains the evacuation step.

13. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meheen in view of Dekleva (US PGPub 2003/0232114).

In Re claim 28 Meheen as applied to claim 16 above discloses all the limitations, but doesn't disclose a liquid enriched with oxygen. The examiner notes that the Meheen method is directed primarily to the bottling of beverages. Dekleva discloses an oxygen enriched beverage (abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to try to using the Meheen method to bottle an oxygen enriched beverage.

14. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clusserath in view of Tsukano and in further view of Dekleva.

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In Re claim 28 Clusserath in view of Tsukano as applied to claim 16 above discloses all the limitations, but doesn't disclose a liquid enriched with oxygen. The examiner notes that the Clusserath method is directed primarily to the bottling of beverages. Dekleva discloses an oxygen enriched beverage (abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to try to using the Meheen method to bottle an oxygen enriched beverage.

15. Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clusserath in view of Tsukano and in further view of Bethurum (4,120,425).

In Re claims 35 and 36 Clusserath in view of Tsukano as applied to claim 33 above discloses all the limitations, but doesn't disclose separating the liquid in the vat from the pressurizing gas.

In Figure 1 Bethurum discloses a liquid dispenser (13) comprising a beverage (2) separated from a pressure exerting gas (2) by a membrane (4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Clusserath apparatus by adding a membrane separating the liquid in the vat from the pressure exerting gas, as taught by Bethurum, in order to prevent the gas from potentially contaminating the liquid.

16. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clusserath in view of Tsukano and in further view of Quinn.

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In Re claim 37 Clusserath in view of Tsukano as applied to claim 30 above discloses all the limitations, but doesn't disclose an apparatus for introducing a liquid gas into an open container.

With reference to Figure 1 Quinn discloses an apparatus (2) for introducing a liquid gas into an open container prior to filling with liquid (Column 7, lines 55-62).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Clusserath apparatus by adding the Quinn device for introducing a liquid gas, in order to help exclude oxygen from the filling process.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON K. NIESZ whose telephone number is (571)270-3920. The examiner can normally be reached on mon-fri 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason K Niesz  
Examiner  
Art Unit 3751

/Timothy L Maust/  
for Gregory Huson, SPE of Art Unit 3751